

Exhibit “YY” to Amended Verified Petition

VINCENT J. DOCE ASSOCIATES
ENGINEERS~SURVEYORS~PLANNERS
PROJECT CONSULTANTS - LAND CONSULTANTS

September 1, 2005

Alexander F. Ciesluk, Jr.
NYSDEC
21 South Putt Corners Road
New Paltz, NY 12561-1696

August 19, 2005

Re: Mehlon Trucking, Inc. - DEC#3-3342-00022-00005

Dear Sir,

The following is a response to those public comments received from your office regarding the above mentioned project. Many of the various letters of comment reference the same areas of concern, including: water quality issues (including sediment control and erosion), air quality issues (including noise pollution), and foundation and structure damage issues. Some other concerns mentioned include the displacement of wildlife, traffic patterns, usage variances, and safety issues. The following is submitted for your consideration.

Issues of water quality and erosion control are addressed in Section 2.4.3 and in Appendix 3 (The Drainage Report) of the submitted "Mined Land Use - Plan for the Kings Hill Road Shale Mine", the last revised edition of which was submitted to your office in March 2003. As per the water table, and possible effect thereon, mining activities are historically not known to affect the water balance of the locality. In fact, this particular operation is expected to return the mined area to its relative pre-mining configuration; therefore, the effect on the water balance should be minimal, if any. Erosion control will be accomplished through the use of concurrent reclamation processes, phase mining (limiting the mined area at any one time), immediate seeding and grading at the conclusion of each phase, and the diversion of surface runoff away from the mined area. The runoff diversion should also alleviate any concerns about local water quality and sedimentation. As most of the water on-site flows in a westerly direction, away from the adjacent developed parcels, well-water contamination should not be a concern. Any water that would flow through the mined area will be diverted and slowed - through the use of swales, level spreaders, and silt fences - into an updated and modified version of the existing detention basin.

Post-mining reclamation, reseeding, and regarding should alleviate any and all concerns for future erosion and flooding possibilities.

As per the concerns over air quality and noise pollution, most of these are addressed in Section 2.4 through Section 2.4.2 in the above-mentioned plan. Specifically, dust control is addressed in Section 2.4.1, which lays out the basic plan for

5020 ROUTE 9W, SUITE 104
NEWBURGH, NEW YORK 12550
PHONE 845-561-1170 FAX 845-561-7738

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Controlling on-site particulates through the use of compacted and water-sprayed roadways, vegetated topsoil stockpiles, immediate site reclamation, and by minimizing the area to be mined at any one time.

As for noise control, an extensive noise-level survey, using the miner's own equipment, was conducted by Wehran Engineering. The noise level, using the DEC's own mitigation standards, should not exceed 55db at 700 feet from the on-site crusher – in other words, the noise level along Kings Hill Road should be well-within the Town of Newburgh's accepted noise-pollution levels, considering only the distance between developed land and the operation. This noise-mitigation should further be assisted by the topography of the land itself; the homes along Kings Hill Road are separated from the mining site by the surrounding deciduous forest and the shale ridge itself.

Concerns over the safety of local infrastructure, specifically the foundations of homes in the relative vicinity, are to be taken very seriously. These concerns are addressed in the Vibration Control Program in the above-mentioned plan (Sec. 2.3.3). All residents with structures within 800 feet of the mining site are entitled to pre-blast surveys of their foundations, including recommendations for adjustments to blasting procedures if conditions warrant. It is our contention, however, that the scale-distance equation located within the plan ($W=D/55$) is sufficient to protect any dwelling of relative proximity, and that concurrent seismic monitoring should alleviate any concern for the safety of all underground structures of relative proximity.

In regards to the letter submitted by Ms. Susan L. Cockburn, Supervisor of the Town of Montgomery, the following point-by-point rebuttal is submitted.

This office is well-aware of Land-Use Variance procedures, and will follow any and all permit processes in the Town of Montgomery.

Questions have arisen over traffic impacts and permissions to ship freight overtop the New York City Aqueduct on King's Hill Road. In a letter dated April 14, 1999 to then Town of Newburgh Supervisor George P. Bucci, Jr., our client estimates a range of six to twelve vehicles in-and-out of the mining operation per day, with most of the shipping being done at midday. Pickup times will be well-coordinated in order to minimize impact on local vehicles, especially during school pick-up and drop-off times. As for road maintenance issues, our client has entered into an agreement with the Town of Newburgh to co-inspect the roadway for damage at a period of six months following the inception of mining operations, and again at one year. In a letter dated January 26, 2001 to the Town of Newburgh Supervisor's Office, Mehlon Trucking agreed to perform any maintenance suggested by the Town Highway Superintendent following those inspections. As for the permissions to run freight across the NYC aqueduct on King's Hill Road, permission was granted in a 5-0 unanimous vote of the Town Board on June 13, 2001.

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As for the mine-limit setback concerns, Ms. Cockburn admits that there would likely be no problem given a variance issuance. As for her assertion that "there is no consideration for the impacts of wells in the adjacent Town of Newburgh," a close reading of the plan would show that all due concern has been given not only to wells, but to all proximate structures, as previously discussed above.

Safety issues are of concern to the developer, and an adequate gate will be installed (refer to page 6 of the above-mentioned plan). While sufficient attention will be given to the immediate area surrounding blast-locations and steep grades, the area to be mined lies sufficiently far from nearby dwellings and roads that they should not pose a danger to nearby pedestrians or vehicles.

As for her objection to the chipping and stumping of brush, and her assertion that this use is not allowed in this zoning district, the developer maintains that this process is merely incidental, not unlike a landowner clearing brush to make space for the addition to a home, and therefore require no use variance.

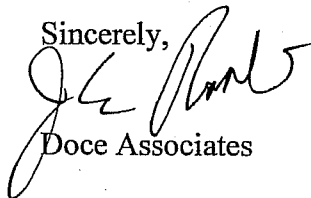
Her issues regarding proofreading of the plan are noted and will be addressed.

Ms. Cockburn questions the legitimacy of the drainage report, and suggests that revisions be made to conform to a format more to her liking. We must maintain that our drainage report is adequate and correct, and assert that no changes are legally necessary to conform to any pre-determined format.

Ms. Cockburn repeatedly stresses the need for extensive restructuring to areas of the plan concerned with safety, water issues, noise issues, and vibration control issues. We maintain that the information contained in our plan is more than sufficient to address all these areas of concern.

We thank you for your time.

Sincerely,



Doce Associates

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